UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOY-CHARITY G. O'HALLORAN, Ph.D., LT, CHC, USN, Plaintiff, v. DONALD C. WINTER, Secretary of the Navy, *et al.*, Defendants.	Civil No. 08CV1319 JAH(NLS) **ORDER DENYING REQUEST FOR TEMPORARY RESTRAINING ORDER**

Plaintiff Joy-Charity G. O'Halloran ("plaintiff"), proceeding *pro se*, has filed a complaint seeking an order for an "immediate" and "emergency injunction" to "stop [plaintiff's] separation" from military active duty. *See* Compl. at 1, 2. Because plaintiff seeks "immediate" and "emergency" relief, this Court deems it appropriate to treat plaintiff's averments as a request for a temporary restraining order pursuant to Rule 65 of the Federal Rules of Civil Procedure. A party seeking injunctive relief under Rule 65 must show either (1) a combination of likelihood of success on the merits and the possibility of irreparable harm, or (2) that serious questions going to the merits are raised and the balance of hardships tips sharply in favor of the moving party. Immigrant Assistance Project of the L.A. County of Fed'n of Labor v. INS, 306 F.3d 842, 873 (9th Cir. 2002); Sun Microsystems, Inc. v. Microsoft Corp., 188 F.3d 1115, 1119 (9th Cir. 1999); Roe v. Anderson, 134 F.3d 1400, 1402 (9th Cir. 1998). "'These two formulations represent two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases.'" Roe, 134 F.3d at 1402 (quoting United States v. Nutri-cology, Inc., 982 F.2d 394, 397 (9th Cir. 1992)); *accord* Sun Microsystems, 188 F.3d at 1119. "Thus, 'the greater the relative hardship to the moving party, the less probability of success must be shown." Sun Microsystems, 188 F.3d at 1119 (quoting Nat'l Ctr. for Immigrants Rights v. INS, 743 F.2d 1365, 1369 (9th Cir. 1984)).

Plaintiff is currently an active member of the United States Navy facing transfer to temporary disability retired status on July 24, 2008. *See* Compl., Exh. A at 1. Plaintiff requests this Court issue an order enjoining "the unlawful requirement that [plaintiff] execute military separation orders" that may violate plaintiff's civil rights. Compl. at 2. However, this Court is mindful that certain military decisions are not subject to judicial review. *See* Denton v. Sec'y of the Air Force, 483 F.2d 21, 24 (9th Cir. 1973). An internal military decision is unreviewable unless the plaintiff alleges (1) a violation of the Constitution, a federal statute, or a military regulation; and (2) exhaustion of available intraservice remedies. If both of these prerequisites are met, the Court then must weigh four factors to determine whether review should be conducted: "(1) the nature and strength of the plaintiff's claim; (2) the potential injury to the plaintiff if review is denied; (3) the extent to which review would potentially interfere with military functions; and (4) the extent to which military discretion or expertise is involved." Briggs v. Dalton, 939 F.Supp. 753, 758 (D.Haw. 1996)(citing Wallace v. Chappell, 661 F.2d 729, 733 (9th Cir. 1981)).

This Court finds that plaintiff has failed to meet the initial prerequisite for seeking judicial review, that is, plaintiff has provided no information concerning her exhaustion of available intraservice remedies. In addition, this Court finds plaintiff's complaint lacks sufficient factual support to allow the Court to properly weigh the applicable factors in determining whether review should be granted in this case. Plaintiff provides insufficient information from which the Court may determine the nature and strength of her claim, the potential interference with military functions this Court's review might create or whether military discretion or expertise may be involved in the decision-making process.

Thus, this Court finds plaintiff has presented insufficient information in her complaint to determine whether her claims are reviewable by this Court. *See* Immigrant Assistance Project, 306 F.3d at 873. Therefore, this Court finds plaintiff has failed to demonstrate a likelihood of success on the merits of her claims or that serious questions going to the merits are raised here. Accordingly, IT IS HEREBY ORDERED that plaintiff's request for an "immediate," "emergency injunction" enjoining the military from releasing plaintiff from active duty, construed as a request for a temporary restraining order pursuant to Rule 65 of the Federal Rules of Civil Procedure, is **DENIED.**

DATED: July 23, 2008

JOHN A. HOUSTON
United States District Judge